Supreme Court, U.S.
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No. 92-1983

In The

Supreme Court of the United States

October Term, 1992

LYNN ANN STEIRER, a Minor, by BARBARA and THOMAS STEIRER, as Guardians and in Their Own Right; DAVID STEPHEN MORALIS, a Minor by THOMAS and BARBARA MORALIS, as Guardians and in Their Own Right,

Petitioners,

vs.

BETHLEHEM AREA SCHOOL DISTRICT; THOMAS J. DOLUSIO; ELLEN PAGANO; BARBARA HUTH; JOSEPH McCARTHY; JOHN SPIRK, SR.; RUTH PROSSER; URIEL TRUJILLO; LAWRENCE KISSLINGER; LYNN GLANCY; ROBERT THOMPSON,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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COUNTERSTATEMENT OF QUESTIONS PRESENTED

1. Should this Court accept the parents' invitation to this Court to provide an advisory opinion about community service programs?

2. Does the Third Circuit's dismissal of the parents' Thirteenth Amendment claim warrant the granting of the parents' Petition for Writ of Certiorari by this Court?

3. Does the Third Circuit's dismissal of the parents' First Amendment claim warrant the granting of the parents' Petition for Writ of Certiorari by this Court?

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ORDERS BELOW

The School District hereby incorporates by reference the statement of orders below section provided on page 1 of the parents' Petition for Writ of Certiorari as if fully set forth herein.

STATEMENT OF JURISDICTION

The School District hereby incorporates by reference the Statement of Jurisdiction provided on page 1 of the parents' Petition for Writ of Certiorari as if fully set forth herein.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The School District hereby incorporates by reference the Statement of Constitutional and Statutory Provisions provided on page 1 of the parents' Petition for Writ of Certiorari as if fully set forth herein.

COUNTERSTATEMENT OF FACTS

Petitioners are two sets of parents who reside within the Bethlehem Area School District and their two children, (collectively referred to hereinafter as the "parents"), who attend public schools operated by the Bethlehem Area School District. Respondents are the School District, the members of the Board of School Directors of the School District, and the School District Superintendent (collectively referred to hereinafter as the "School District"), The School District, which is located in Lehigh and Northampton Counties, serves a population of approximately 100,000 and it enrolls approximately 12,000 students, 3,500 of which are high school students.

The School District first began considering adoption of the Community Service Program (hereinafter "the program") in March 1989. After thoroughly researching such a program, conducting numerous meetings, and creating a task force comprised of school board members, administrators, school employees, parents and agency representatives, the School District adopted the program as a component of the high school curriculum of studies on April 30, 1990. The program as adopted requires

students to perform sixty hours of unpaid service to community organizations *or* through individual and independent experiential situations approved by the School District. Students may spread out their service over the four years of high school, or may perform it at one time. Students are afforded several options from which to choose, ranging from tutoring other students to conducting historical research to working with the handicapped, elderly or homeless.

Each student must apply for the particular service activity he or she desires to pursue at a community organization or through an independent project, or through both. The School District utilizes separate application forms for students to use for each kind of service. After the student's selection is approved, he or she must perform the service. If problems arise, the service can be changed. The School District oversees the performance of service. Guidance counselors conduct small group discussions and community service coordinators make regular on-site visitation to observe students personally performing service and to speak with students concerning their experiences. After the students complete their service, they must complete an "experience summary form" to encourage them to reflect upon their experiences. After providing sixty hours of service and completing the paperwork requirements, each student receives .5 units of credit toward the school's credit requirement for high school graduation. The program is "pass/ fail"; no letter grades are given.

Contrary to the parents' allegations, the School District is not forcing the students to endorse or affirm any ideals, beliefs or standards. The parents admitted in their depositions that the students are not asked to adopt or express any particular ideals or beliefs, nor do they have to agree with the program or its objectives.

The program was recommended to advance seventeen

educational purposes. For example, the program is designed to help students learn about the significance of rendering service to their community, to teach students about community organizations, to develop intellectual development in academic learning in such areas as the expression of ideas, reading and record keeping, and to improve the students' self-esteem.

With very limited exception, the parents admitted that the seventeen enumerated objectives were purposes of the program and proper purposes of public school education. In those limited instances in which one or more of the parents expressed the opinion that one of the purposes was not a purpose of the program or was not a proper purpose of public school education, no evidence was presented to support that opinion.

The School District introduced affidavits of several experts to support its position that the program serves legitimate educational objectives. Ernest Boyer, president of the Carnegie Foundation for the Advancement of Teaching, and a former United States Commissioner of Education, advocates community service because of his long-term commitment to high quality public education. Commenting upon the School District's specific program, Dr. Boyer stated in part, "the rationale for the program is educationally sound." Gary Doyle, Deputy Superintendent of the Bloomfield Hill Schools in Bloomfield Hills, Michigan, opined that the mandatory program in his district promotes the same purposes sought to be advanced in the Bethlehem Area School District. Joseph F. Bard, then Acting Commissioner of the Pennsylvania Department of Education, wrote to the School District saying, "I congratulate the Bethlehem Area School Board for their interesting community service and its value to the educational process."

The parents filed their Complaint seeking injunctive and declaratory relief that the School District's program violates their

First, Thirteenth, and Fourteenth Amendment rights under the United States Constitution. The parents' Thirteenth Amendment claim is predicated upon the assertion that the School District's program constitutes involuntary servitude. The parents' First and Fourteenth Amendment claims are predicated upon the assertion that the School District's program forces the students to endorse and affirm ideals, beliefs and standards.

The parties filed cross-motions for summary judgment in the United States District Court for the Eastern District. On March 30, 1992, the District Court granted the School District's motion in all respects. The parents appealed the District Court's decision to the United States Court of Appeals, Third Circuit. On March 15, 1993, the Third Circuit affirmed the decision of the District Court. On June 15, 1993, the parents filed a Petition for Writ of Certiorari with this Court.

SUMMARY OF ARGUMENT

The parents contend that this Court should establish constitutional standards governing mandatory community service programs. In effect, the parents are asking that this Court issue an advisory opinion to establish constitutional parameters governing mandatory community service programs. The law is well-established that it is not this Court's function to provide advisory opinions, and this Court should decline the invitation to provide such an opinion on the constitutionality of community service programs.

The parents also contend that the Third Circuit's decision conflicts with the plain language of the Thirteenth Amendment and this Court's precedents in interpreting the First and Thirteenth Amendments. The School District submits that the Third Circuit dismissed the parents' First and Thirteenth Amendment claims in accordance with well-established constitutional law. The Third

Circuit properly found that the School District's community service program does not constitute involuntary servitude and does not force the students to endorse and affirm ideals, beliefs, and standards in contravention of their First Amendment rights.

For these reasons, this Court should deny the parents' Petition for Writ of Certiorari.

REASONS FOR DENYING THE WRIT

I.

THE PARENTS' INVITATION TO THIS COURT TO PROVIDE AN ADVISORY OPINION ABOUT COMMUNITY SERVICE PROGRAMS IS INAPPROPRIATE.

The parents posit that this Court should grant its Writ because the School District's program reflects a growing national trend toward community service raising the need for constitutional standards. Couched in the language of Rule 17.1(c) of this Court, the parents contend that the Third Circuit has decided an important question of federal law which has not been, but should be, settled by this Court. The School District acknowledges that there is a trend among school districts toward instituting community service programs, but this does not warrant the granting of the parents' Writ so that the Court can establish constitutional standards.

It is beyond cavil that school districts around the country are realizing, like the School District in the instant case, that community service programs serve valuable educational benefits and should be included in their curricula. The parents advance the untenable position that simply because there is a trend toward community service among school districts this Court is obliged to establish constitutional standards. In effect, the parents are asking that this Court issue an advisory opinion to establish constitutional parameters governing mandatory community service programs.

It is well-established that this Court's function is not to provide advisory opinions. *Federal Communications Com. v. Pacifica Foundation,* 438 U.S. 726 (1978); *Alabama State Federation of Labor v. McAdory,* 325 U.S. 450 (1945). In *Federal Communications Com.*, this Court stated:

> However appropriate it may be for an administrative agency to write broadly in an adjudicatory proceeding, federal courts have never been empowered to issue advisory opinions.

438 U.S. at 735.

In *Alabama State Federation of Labor,* this Court declared:

> This Court is without power to give advisory opinions. It has long been its considered practice not to decide abstract, hypothetical or contingent questions, or to decide any constitutional question in advance of the necessity for its decision, or to formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied.

325 U.S. at 461-2. (Citations omitted).

In accord with these principles, this Court should decline the invitation to provide an opinion as to the constitutionality of community service programs.

The parents also argue that the one appeals court — the Third Circuit in the instant case — that has addressed the constitutional questions raised by these programs "seriously misconstrued relevant constitutional provisions and this Court's precedents."

(page 5 of the parents' Brief). As discussed herein, the Third Circuit trenchantly analyzed this Court's precedents with respect to the parents' First and Thirteenth Amendment claims and found that the School District's community service program does not constitute involuntary servitude nor does it require the students to affirm ideals, beliefs, and standards. The Third Circuit did not, as the parents spuriously contend, misconstrue relevant constitutional provisions and this Court's precedents, and therefore it is unnecessary for this Court to hear the case.

II.

THIS COURT SHOULD NOT GRANT THE PARENTS' PETITION FOR WRIT OF CERTIORARI BECAUSE THE THIRD CIRCUIT DISMISSED THE PARENTS' THIRTEENTH AMENDMENT CLAIM IN ACCORDANCE WITH WELL-ESTABLISHED CONSTITUTIONAL LAW.

The parents maintain that this Court should grant its Writ because the Third Circuit's decision conflicts with the plain language of the Thirteenth Amendment and this Court's precedents interpreting the Thirteenth Amendment. In effect, the parents take the position that their Writ should be granted because the Third Circuit decided a federal question in a way which conflicts with applicable decisions of this Court. (S. Ct. Rule 17.1(c)). The School District argues that the Third Circuit correctly interpreted the Thirteenth Amendment's language and applicable decisions of this Court, and therefore the parents' Writ should be denied.

The parents first contend that the Third Circuit's decision conflicts with the plain language of the Thirteenth Amendment. An examination of the Amendment's language and applicable cases renders this contention meritless.

Section 1 of the Thirteenth Amendment provides:

> Neither slavery nor involuntary servitude, accept as a punishment for crime whereof the parties shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

In *United States v. Kozminski*, 487 U.S. 931 (1988), this Court crystallized the phrase "involuntary servitude";

> The primary purpose of the [Thirteenth] Amendment was to abolish the institution of African slavery as it had existed in the United States at the time of the Civil War, but the Amendment was not limited to that purpose; the phrase "involuntary servitude" was intended to extend "to cover those forms of compulsory labor akin to African slavery which in practical operation would tend to produce like undesirable results."

487 U.S. at 942.

It is clear from this definition that not every kind of forced work or labor falls within the ambit of the phrase "involuntary servitude"; only those forms akin to African slavery rise to this level. As the Third Circuit noted in its opinion, "modern day examples of involuntary servitude have been limited to labor camps, isolated religious sects, or forced confinement." For example, in *United States v. King*, 840 F.2d 1276 (6th Cir. 1987), a religious cult repeatedly used and threatened the use of physical force to make children perform labor. The Sixth Circuit found this egregious conduct rose to the level of involuntary servitude. Similarly, in *United States v. Booker*, 655 F.2d 562 (4th Cir. 1981), owners of a migrant labor camp forbade farm workers from leaving without paying their debts and enforced this rule by threatening

physical harm to those who attempted to leave. The Fourth Circuit held that this deplorable behavior constituted involuntary servitude.

Conversely, in *Butler v. Perry*, 240 U.S. 328 (1916), the State of Florida required men between the ages of twenty-one and forty-five to perform sixty hours of work on the roads each year. This Court held that such compulsory service did not violate the Thirteenth Amendment and in so doing emphasized that a state should be allowed to require able-bodied men to labor for a reasonable time on public roads without compensation inasmuch as this is a part of the duty which they owed to the public. In the same vein, in *Bobilin v. Board of Education, State of Hawaii*, 403 F. Supp. 1095 (D.C. Hawaii 1985), a school district required students to perform up to seven full days of cafeteria duty in one year. In holding that such a requirement did not constitute involuntary servitude, the court stressed that not all types of forced labor are proscribed by the Thirteenth Amendment.

In the instant case, the School District's mandatory community service program requires that high school students perform sixty hours of community service over a period of four years. The students are afforded a plethora of different types of service from which to choose. They can fulfil their obligation by tutoring other students. Can it seriously be argued that a requirement that students tutor other students in view of the educational benefit to be achieved is prohibited by the Thirteenth Amendment? We suggest not. Clearly, in accord with the cases cited, the Third Circuit properly found that the School District's program does not rise to the level of involuntary servitude.

In finding that the School District's community service program does not constitute involuntary servitude, the Third Circuit emphasized that the program is primarily designed for the students' own educational benefit, notwithstanding some

incidental benefit to the recipients of the services. The parents, however, insist that the Third Circuit misinterpreted the law in arriving at this conclusion. Specifically, the parents argue that the Third Circuit "creates an exception to the prohibition against involuntary servitude for instances in which the government concludes that the involuntary servitude is for the person's own good." (Page 7 of the parents' Brief).

The School District notes, in response to that argument, that there is both a factual and legal basis for the Third Circuit's conclusion. To repeat, the School District instituted the program to satisfy seventeen separate educational goals. Thus, while the recipients of the service are benefited, the chief purpose of the program is to provide educational benefits to the students. As noted in *United States v. Lewis*, 644 F. Supp. 1391 (W.D. Mich. 1986), the determination of whether conduct constitutes involuntary servitude hinges, in part, upon a determination of whose benefit the work is for. Citing numerous cases, the United States District for the Western District of Michigan stated in *Lewis:*

> The very essence of the Thirteenth Amendment is a prohibition against forcing one person to labor against his will *for the benefit of another person.*

644 F. Supp. at 1400. (Emphasis added). Similarly, in *Bobilin, supra,* the court emphasized that many services performed by students, such as erasing blackboards or serving as crosswalk monitors, provide educational benefits for the students:

> These experiences teach not only neatness and responsibility but also civic attitudes fundamental in a collective society where citizens often are called upon to "do his share" without economic compensation.

403 F. Supp. at 1108.

Therefore, contrary to the parents' assertions, it was proper for the Third Circuit to consider that the purpose was to benefit the students in concluding that the School District's community service program does not rise to the level of involuntary servitude.

The parents also argue that it was improper for the Third Circuit to conclude that the program is neither coercive nor involuntary. The parents' argument is disemboweled by a line of cases. In *Lewis, supra,* the court held that a finding of involuntariness requires that the person performing the work against his will, under coercion, and threatened by a superior and overpowering force. In *Watson v. Graves,* 909 F.2d 1549 (5th Cir. 1990), the court added that there is no involuntary servitude when the person performing the work has a choice, even though it is a painful one. The court in *Watson* emphasized that a showing of compulsion is a prerequisite to proof of involuntary servitude.

The case law supports the principle that when those forced to perform work have a choice, regardless of how painful or unattractive that choice is, the work does not rise to the level of involuntary servitude. *See, e.g., International Union v. Wisconsin Employment Relations Board,* 336 U.S. 245 (1949) (injunction of strike by State Labor Relations Board was not violative of the Thirteenth Amendment because the employees had the option of quitting their jobs); *Cunningham v. Virginia School of Cosmetology,* 446 F. Supp. 780 (E.D. Va. 1979) (no violation of the Thirteenth Amendment for school to utilize its students as hairdressers for customers because of the students' voluntary choice to enroll in the school); *Audet v. Board of Regents,* 606 F. Supp. 423 (D. R.I. 1985) (state's refusal to allow a teacher to rescind his certification in subjects in which he no longer wished to teach was not violative of the Thirteenth Amendment because the teacher had the choice of not teaching); *Sellers v. Phillips Barber*

Shop, 46 N.J. 340, 217 A.2d 121 (1966) (an order directing a barber to cut the hair of blacks against his will was not violative of the Thirteenth Amendment because the barber had the choice of not continuing the practice of barbering).

In the instant case, the parents have several choices or options. They could enroll their children in any private school or withdraw their children from school and teach them at home. Moreover, they have the choice of continuing public education at the School District without performing the community service. In that event, the students would not graduate from the School District, but they could then obtain a diploma under the Pennsylvania's G.E.D. provisions after complying with certain testing procedures. Although these choices may not seem attractive to the parents, in accord with *Lewis* and *Watson*, these choices remove the involuntary nature of the community service.

To summarize the law, in order for there to be a finding of involuntary servitude, persons must be required to (1) perform labor akin to African slavery (2) for the benefit of others (3) without having any choices. None of these circumstances is present in the instant case. Therefore, contrary to the parents' assertions, the School District has not conditioned receipt of public education on surrendering of the students' constitutional right to be free from involuntary servitude, nor has it deprived the students of the benefit of free, public education.

For all of these reasons, the School District respectfully requests that with respect to the parents' Thirteenth Amendment claim, this Court deny the parents' Petition for Writ of Certiorari.

III.

THIS COURT SHOULD NOT GRANT THE PARENTS' PETITION FOR WRIT OF CERTIORARI BECAUSE THE THIRD CIRCUIT DISMISSED THE PARENTS' FIRST AMENDMENT CLAIM IN ACCORDANCE WITH WELL-ESTABLISHED CONSTITUTIONAL LAW.

The parents also contend that this Court should grant its Writ because the Third Circuit's decision allegedly conflicts with this Court's precedents prohibiting coerced affirmance of beliefs under the First Amendment. Again, the parents are taking the position that their Writ should be granted because the Third Circuit decided a federal question in a way which conflicts with applicable decisions of this Court. (S. Ct. Rule 17.1(c)). The School District argues that the Third Circuit correctly interpreted applicable decisions of this Court and concluded that the community service program does not force the students to endorse and affirm ideals, beliefs, and standards in contravention of their First Amendment rights.

To reiterate, the School District instituted the community service program to advance seventeen educational purposes. These purposes include having students assume responsibility and to accept the consequence of their actions, giving students a sense of appreciation of the worth of community organizations, and giving students the opportunity to explore new roles, identities, and interests.

In attacking the School District's purposes for instituting the community service program, the parents have flagrantly contorted and taken out of context comments made by School District Official Uriel Trujillo.

The parents stated in their brief that:

> The school directors thought that community service was too important to be left to voluntary efforts to help others in an age of "material consumption, self-indulgence and narcissism." Stressing the necessity of community service to cure supposed selfishness and materialism infecting children is a profoundly political statement.

(Pages 9-10 of the parents' Brief).

The School District wishes to make several points in response. First, the School District does not think that community service is "too important to be left to voluntary efforts." To the contrary, the School District believes that performing community service serves valuable educational objectives and every child should be required to perform it. As Mr. Trujillo noted, if the program were not mandatory, many students would not get involved. (Page 59 of the Appendix to the parents' Brief).

Second, Director Trujillo did *not* state that the community service program was designed "to cure selfishness and materialism infecting children." His point was that as a result of reading newspapers and magazines and watching television, young people are exposed, to some degree, to negative values such as selfishness and materialism. The community service program is not designed to "cure" these values, but to advance the seventeen educational purposes referenced earlier, as conceded by the parents.

Third, by requiring the students to perform community service, the School District is not making "a profoundly political statement." To repeat, School District officials believe that performing community service provides valuable educational benefits for the children. By implementing the community service program, the School District is not making any statement whatsoever, let alone a "profoundly political statement."

Along the same lines, the parents argue that the School District's community service program requires students to engage in expressive conduct in contravention of their First Amendment rights. The parents' argument is eviscerated by a long line of decisions rendered by this Court. In *Texas v. Johnson*, 491 U.S. 397 (1989), this Court made clear that there are limitations upon the types of conduct which are afforded First Amendment protection. Citing *United States v. O'Brien*, 391 U.S. 367 (1967) and *Spence v. Washington*, 418 U.S. 405 (1974), this Court declared in *Texas*:

> While we have rejected the view that an apparently limitless variety of conduct can be labeled "speech" whenever the person engaging in the conduct intends thereby to express an idea, we may have acknowledged the conduct may be sufficiently imbued with elements of communication to fall within the scope of the First and Fourteenth Amendments. In deciding whether particular conduct possesses sufficient communicative elements to bring the First Amendment into play, we have asked whether "an intent to convey a particularized message was present, and [whether] the likelihood was great that the message would be understood by those who viewed it."

491 U.S. at 404.

In the same vein, in *City of Dallas v. Stanglen*, 490 U.S. 19 (1989), the Court noted that:

> It is possible to find some kernel of expression in almost every activity a person undertakes -- for example, walking down the street, or

> meeting one's friends at a shopping mall, but such a kernel is not sufficient to bring the activity within the protection of the First Amendment.

490 U.S. at 25.

Thus, in analyzing a claim brought under the First Amendment, a court must determine whether the conduct complained of is inbued with elements of communication and whether it manifests an intent to convey a particularized message. The court, of course, must be mindful that a finding of some kernel of expression in conduct is not tantamount to a finding that the conduct is afforded First Amendment protection.

In several cases, this Court has found a First Amendment violation because the conduct complained of was imbued with elements of communication and manifested an intent to convey a particularlized message. *See, e.g., Tinker v. DesMoines Independent Community School District*, 393 U.S. 503 (1969) (public school students were suspended for wearing armbands to protest the government's policy in Vietnam); *Wooley v. Maryland*, 430 U.S. 705 (1977) (state required that a person display its motto "Live Free or Die," as embossed on cars' license plates); *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943) (school board adopted a resolution requiring public school pupils to salute the flag while reciting a pledge of allegiance under the penalty of expulsion).

The parents argue that "the facts of *Barnette* are remarkably similar to those of the instant case" and "whether through forced flag salutes in *Barnette* or forced community service in the instant case, school directors are prescribing a political orthodoxy and compelling the students to submit to that philosophy." (page 10 of the parents' Brief). The School District argues and the Third

Circuit so held, that unlike the flag salute in *Barnette*, performing the community service lacks the necessary expressive component to rise to the level of a First Amendment violation. In arriving at this conclusion, the Third Circuit made several salient points.

First, the Third Circuit emphasized that in determining whether conduct is expressive, it is important to examine the viewers' perception of the activity. Citing several cases, the Third Circuit noted that participating in a civil rights march, burning a draft card to protest the war, and labor picketing are activities afforded First Amendment protection in part because people observing the conduct would see it as the expression of a particularized message. In the instant case, the parents failed to produce any evidence that people in the community who see the students performing community service would perceive their actions as an intended expression of a particularized message of their belief in the value of community service and altruism. As the Third Circuit aptly stated, it is just as likely that students performing the commuity service would be viewed merely as students completing their high school graduation requirements.

The Third Circuit also observed in its opinion that under some circumstances, a school-imposed community service program could constitute expressive conduct implicating First Amendment considerations. For example, a student required to provide community service to an organization whose message conflicted with the student's opposing views could have a tenable First Amendment claim. In the instant case, however, it is important that students have a multiplicity of options which allows them to provide services to organizations with a wide range of political, religious, and moral views. Students' options include, *inter alia*, conducting historical research, tutoring other students, and working with the handicapped, elderly, or homeless.

However, the parents intimate in their Brief that students are

not afforded a wide variety of options from which to choose, when they state, citing in part the Third Circuit's opinion, that "students' choices are limited to organizations that (1) demonstrate their intention to promote the welfare of the community; (2) do not 'discriminate against any race, religion, or sex'; and (3) provide assurances that the organization is 'free from doctrinal motivation.' " (page 12 of the parents' Brief). This representation is false. Students do not have to provide service to any organization, but may provide an independent service.

Furthermore, in administering the program, the School District maintains a list of more than seventy approved community service organizations and students and parents may submit names or other potential organization to the District Coordinator for approval. Accordingly, the parents' suggestion that the students have "limited" options is meritless.

Moreover, and of critical importance, the parents unanimously agreed that the School District's program does not compel the students to endorse or affirm any ideals, beliefs, or standards.

Barbara Steirer admitted:

> Q. They can perform the service and willingly express their opinion if they think it's a ridiculous program and still pass, can't they?
>
> A. If they do it, they pass, if they don't do it —.
>
> Q. But they could express and hold to any ideal and belief they want to and still pass; isn't that correct?
>
> A. Yes, I guess their own idea.

Thomas Steirer concurred with his wife:

> Q. The students will not be asked to adopt or express any particular ideal or belief in order to pass, they just have to select a service, perform it, document it, and complete the summary experience forms; isn't that true?
>
> A. Yes.

Barbara Moralis testified:

> Q. Do you have any evidence that a child will have to believe in the objectives and purposes of the progam in order to pass it?
>
> A. We see nothing yet.
>
> Q. Do you have any evidence?
>
> A. Not yet.
>
> Q. Do you have any evidence that a child will have to say it agrees with the purposes in order to pass it?
>
> A. Not yet.

Similarly, Thomas Moralis stated:

> Q. And isn't it true that students will not be asked to adopt or express any particular ideals or beliefs in order to pass?

A. That is as stated in the curriculum guide.

Q. And a child does not have to agree with the program in order to pass it, does he?

A. As far as I know, no.

Q. The child does not have to believe in objectives of the program in order to pass it, does he?

A. As far as I know, again, at this point, no.

Therefore, the parents' contention that the program forces the children to endorse or affirm any ideals, beliefs or standards is untenable.

In sum, in order for conduct to be afforded First Amendment protection, it must be imbued with elements of communication and must manifest an intent to convey a particularized message. Unlike the conduct in *Barnette, Tinker,* and *Wooley,* the mandatory community service program in the instant case is not imbued with the requisite elements of communication, and the performance of such service does not convey a particularized message. The students are afforded a multitude of options, including independent projects, and therefore would not have to provide service to an organization whose message conflicted with theirs. The students are not required to affirm beliefs, ideals, or standards, nor would people in the community view them as affirming beliefs, ideals, or standards. Thus, contrary to the assertions of the parents, the School District is not conditioning the receipt of a publicly provided education on the surrender of the First Amendment right to be free of coerced affirmation of belief. Indeed, the students are surrendering no First Amendment rights by performing community service.

For all these reasons, the School District respectfully requests that with respect to the parents' First Amendment claim, this Court deny the parents' Petition for Writ of Certiorari.

CONCLUSION

The Third Circuit did not decide a federal question in a way which conflicts with applicable decisions of this Court, nor did it decide an important question of federal law which has not been, but should be, settled by this Court.

The Third Circuit dismissed the parents' First and Thirteenth Amendment claims in accordance with well-established constitutional law. Moreover, it is unnecessary for this Court to establish constitutional standards governing mandatory community service programs. Accordingly, the School District respectfully requests that this Court deny the parents' Petition for Writ of Certiorari.

Respectfully submitted,

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